

AMENDED IN SENATE AUGUST 24, 2012

AMENDED IN SENATE AUGUST 15, 2012

AMENDED IN SENATE JUNE 16, 2011

AMENDED IN ASSEMBLY MARCH 25, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 733

Introduced by Assembly Member Ma

February 17, 2011

An act to amend Sections 49076 and 49076.5 of the Education Code, relating to pupil records.

LEGISLATIVE COUNSEL'S DIGEST

AB 733, as amended, Ma. Pupil records: privacy rights.

Existing law prohibits a school district from permitting access to pupil records to any person without written parental consent or judicial order, except as provided.

This bill would make various changes to these pupil record provisions to conform them to federal law, *except as specified*.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 49076 of the Education Code is amended
- 2 to read:
- 3 49076. (a) A school district shall not permit access to pupil
- 4 records to a person without written parental consent or under

1 judicial order except as set forth in this section and as permitted
2 by Part 99 (commencing with Section 99.1) of Title 34 of the Code
3 of Federal Regulations.

4 (1) Access to those particular records relevant to the legitimate
5 educational interests of the requester shall be permitted to the
6 following:

7 (A) School officials and employees of the school district,
8 members of a school attendance review board appointed pursuant
9 to Section 48321 who are authorized representatives of the school
10 district, and any volunteer aide, 18 years of age or older, who has
11 been investigated, selected, and trained by a school attendance
12 review board for the purpose of providing followup services to
13 pupils referred to the school attendance review board, provided
14 that the person has a legitimate educational interest to inspect a
15 record.

16 (B) Officials and employees of other public schools or school
17 systems, including local, county, or state correctional facilities
18 where educational programs leading to high school graduation are
19 provided or where the pupil intends to or is directed to enroll,
20 subject to the rights of parents as provided in Section 49068.

21 (C) Authorized representatives of the Comptroller General of
22 the United States, the Secretary of Education, and state and local
23 educational authorities, or the United States Department of
24 Education's Office for Civil Rights, if the information is necessary
25 to audit or evaluate a state or federally supported education
26 program, or in connection with the enforcement of, or compliance
27 with, the federal legal requirements that relate to such a program.
28 Records released pursuant to this section shall comply with the
29 requirements of Section 99.35 of Title 34 of the Code of Federal
30 Regulations.

31 (D) Other state and local officials to the extent that information
32 is specifically required to be reported pursuant to state law adopted
33 before November 19, 1974.

34 (E) Parents of a pupil 18 years of age or older who is a
35 dependent as defined in Section 152 of Title 26 of the United States
36 Code.

37 (F) A pupil 16 years of age or older or having completed the
38 10th grade who requests access.

39 (G) A district attorney who is participating in or conducting a
40 truancy mediation program pursuant to Section 48263.5, or Section

601.3 of the Welfare and Institutions Code, or participating in the presentation of evidence in a truancy petition pursuant to Section 681 of the Welfare and Institutions Code.

(H) A district attorney's office for consideration against a parent or guardian for failure to comply with the Compulsory Education Law (Chapter 2 (commencing with Section, 48200)) or with Compulsory Continuation Education (Chapter 3 (commencing with Section 48400)).

(I) (i) A probation officer, district attorney, or counsel of record for a minor for purposes of conducting a criminal investigation or an investigation in regards to declaring a person a ward of the court or involving a violation of a condition of probation.

(ii) For purposes of this subparagraph, a probation officer, district attorney, and counsel of record for a minor shall be deemed to be local officials for purposes of Section 99.31(a)(5)(i) of Title 34 of the Code of Federal Regulations.

(iii) Pupil records obtained pursuant to this subparagraph shall be subject to the evidentiary rules described in Section 701 of the Welfare and Institutions Code.

(J) A judge or probation officer for the purpose of conducting a truancy mediation program for a pupil, or for purposes of presenting evidence in a truancy petition pursuant to Section 681 of the Welfare and Institutions Code. The judge or probation officer shall certify in writing to the school district that the information will be used only for truancy purposes. A school district releasing pupil information to a judge or probation officer pursuant to this subparagraph shall inform, or provide written notification to, the parent or guardian of the pupil within 24 hours of the release of the information.

(K) A county placing agency when acting as an authorized representative of a state or local educational agency pursuant to subparagraph (C). School districts, county offices of education, and county placing agencies may develop cooperative agreements to facilitate confidential access to and exchange of the pupil information by email, facsimile, electronic format, or other secure means, provided the agreement complies with the requirements set forth in Section 99.35 of Title 34 of the Code of Federal Regulations.

(2) School districts may release information from pupil records to the following:

1 (A) Appropriate persons in connection with an emergency if
2 the knowledge of the information is necessary to protect the health
3 or safety of a pupil or other persons. Schools or school districts
4 releasing information pursuant to this section shall comply with
5 the requirements set forth in Section 99.32(a)(5) of Title 34 of the
6 Code of Federal Regulations.

7 (B) Agencies or organizations in connection with the application
8 of a pupil for, or receipt of, financial aid. However, information
9 permitting the personal identification of a pupil or his or her parents
10 may be disclosed only as may be necessary for purposes as to
11 determine the eligibility of the pupil for financial aid, to determine
12 the amount of the financial aid, to determine the conditions which
13 will be imposed regarding the financial aid, or to enforce the terms
14 or conditions of the financial aid.

15 (C) Pursuant to Section 99.37 of Title 34 of the Code of Federal
16 Regulations, a county elections official, for the purpose of
17 identifying pupils eligible to register to vote, or for conducting
18 programs to offer pupils an opportunity to register to vote. The
19 information shall not be used for any other purpose or given or
20 transferred to any other person or agency.

21 (D) Accrediting associations in order to carry out their
22 accrediting functions.

23 (E) Organizations conducting studies for, or on behalf of,
24 educational agencies or institutions for the purpose of developing,
25 validating, or administering predictive tests, administering student
26 aid programs, and improving instruction, if the studies are
27 conducted in a manner that will not permit the personal
28 identification of pupils or their parents by persons other than
29 representatives of the organizations, the information will be
30 destroyed when no longer needed for the purpose for which it is
31 obtained, and the organization enters into a written agreement with
32 the educational agency or institution that complies with Section
33 99.31(a)(6) of Title 34 of the Code of Federal Regulations.

34 (F) Officials and employees of private schools or school systems
35 where the pupil is enrolled or intends to enroll, subject to the rights
36 of parents as provided in Section 49068 and in compliance with
37 the requirements in Section 99.34 of Title 34 of the Code of Federal
38 Regulations. This information shall be in addition to the pupil's
39 permanent record transferred pursuant to Section 49068.

1 (G) (i) *A contractor or consultant with a legitimate educational*
2 *interest who has a formal written agreement or contract with the*
3 *school district regarding the provision of outsourced institutional*
4 *services or functions by the contractor or consultant.*

5 (ii) *Notwithstanding Section 99.31(a)(1)(i)(B) of Title 34 of the*
6 *Code of Federal Regulations, a disclosure pursuant to this*
7 *paragraph shall not be permitted to a volunteer or other party.*

8 (3) A person, persons, agency, or organization permitted access
9 to pupil records pursuant to this section shall not permit access to
10 any information obtained from those records by another person,
11 persons, agency, or organization, except for allowable exceptions
12 contained within the federal Family Educational Rights and Privacy
13 Act of 2001 (20 U.S.C. Sec. 1232g) and state law, without the
14 written consent of the pupil's parent. This paragraph does not
15 require prior parental consent when information obtained pursuant
16 to this section is shared with other persons within the educational
17 institution, agency, or organization obtaining access, so long as
18 those persons have a legitimate educational interest in the
19 information pursuant to Section 99.31(a)(1)(i)(A) of Title 34 of
20 the Code of Federal Regulations.

21 (4) Notwithstanding any other provision of law, a school district,
22 including a county office of education or county superintendent
23 of schools, may participate in an interagency data information
24 system that permits access to a computerized database system
25 within and between governmental agencies or school districts as
26 to information or records that are nonprivileged, and where release
27 is authorized as to the requesting agency under state or federal law
28 or regulation, if each of the following requirements are met:

29 (A) Each agency and school district shall develop security
30 procedures or devices by which unauthorized personnel cannot
31 access data contained in the system.

32 (B) Each agency and school district shall develop procedures
33 or devices to secure privileged or confidential data from
34 unauthorized disclosure.

35 (C) Each school district shall comply with the access log
36 requirements of Section 49064.

37 (D) The right of access granted shall not include the right to
38 add, delete, or alter data without the written permission of the
39 agency holding the data.

1 (E) An agency or school district shall not make public or
2 otherwise release information on an individual contained in the
3 database if the information is protected from disclosure or release
4 as to the requesting agency by state or federal law or regulation.

5 (b) The officials and authorities to whom pupil records are
6 disclosed pursuant to subdivision (f) of Section 48902 and
7 subparagraph (I) of paragraph (1) of subdivision (a) shall certify
8 in writing to the disclosing school district that the information
9 shall not be disclosed to another party, except as provided under
10 the federal Family Educational Rights and Privacy Act of 2001
11 (20 U.S.C. Sec. 1232g) and state law, without the prior written
12 consent of the parent of the pupil or the person identified as the
13 holder of the pupil's educational rights.

14 (c) (1) Any person or party who is not permitted access to pupil
15 records pursuant to subdivision (a) or (b) may request access to
16 pupil records as provided for in paragraph (2).

17 (2) A local educational agency or other person or party who has
18 received pupil records, or information from pupil records, may
19 release the records or information to a person or party identified
20 in paragraph (1) without the consent of the pupil's parent or
21 guardian pursuant to Section 99.31(b) of Title 34 of the Code of
22 Federal Regulations, if the records or information are deidentified,
23 which requires the removal of all personally identifiable
24 information, provided that the disclosing local educational agency
25 or other person or party has made a reasonable determination that
26 a pupil's identity is not personally identifiable, whether through
27 single or multiple releases, and has taken into account other
28 pertinent reasonably available information.

29 SEC. 2. Section 49076.5 of the Education Code is amended to
30 read:

31 49076.5. (a) Notwithstanding Section 49076, each school
32 district shall release the information it has specific to a particular
33 pupil's identity and location that relates to the transfer of that
34 pupil's records to another school district within this state or any
35 other state or to a private school in this state to a designated peace
36 officer, upon his or her request, when a proper police purpose
37 exists for the use of that information. As permitted by Part 99
38 (commencing with Section 99.1) of Title 34 of the Code of Federal
39 Regulations, the designated peace officer or law enforcement
40 agency shall show the school district that the peace officer or law

1 enforcement agency has obtained prior written consent from one
2 parent, or provide information indicating that there is an emergency
3 in which the information is necessary to protect the health or safety
4 of the pupil or other individuals, or that the peace officer or law
5 enforcement agency has obtained a lawfully issued subpoena or a
6 court order.

7 (b) In order to protect the privacy interests of the pupil, a request
8 to a school district for pupil record information pursuant to this
9 section shall meet the following requirements:

10 (1) For purposes of this section, “proper police purpose” means
11 that probable cause exists that the pupil has been kidnapped and
12 that his or her abductor may have enrolled the pupil in a school
13 and that the agency has begun an active investigation.

14 (2) Only designated peace officers and federal criminal
15 investigators and federal law enforcement officers, as defined in
16 Section 830.1 of the Penal Code, whose names have been submitted
17 to the school district in writing by a law enforcement agency, may
18 request and receive the information specified in subdivision (a).
19 Each law enforcement agency shall ensure that each school district
20 has at all times a current list of the names of designated peace
21 officers authorized to request pupil record information.

22 (3) This section does not authorize designated peace officers to
23 obtain any pupil record information other than that authorized by
24 this section.

25 (4) The law enforcement agency requesting the information
26 shall ensure that at no time shall information obtained pursuant to
27 this section be disclosed or used for a purpose other than to assist
28 in the investigation of suspected criminal conduct or kidnapping.
29 A violation of this paragraph shall be punishable as a misdemeanor.

30 (5) The designated peace officer requesting information
31 authorized for release by this section shall make a record on a form
32 created and maintained by the law enforcement agency that shall
33 include the name of the pupil about whom the inquiry was made,
34 the consent of a parent having legal custody of the pupil or a legal
35 guardian, the name of the officer making the inquiry, the date of
36 the inquiry, the name of the school district, the school district
37 employee to whom the request was made, and the information that
38 was requested.

39 (6) Whenever the designated peace officer requesting
40 information authorized for release by this section does so in person,

1 by telephone, or by some means other than in writing, the officer
2 shall provide the school district with a letter confirming the request
3 for pupil record information before any release of information.

4 (7) A school district, or officer or employee of the school
5 district, shall not be subject to criminal or civil liability for the
6 release of pupil record information in good faith as authorized by
7 this section.